

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

In Re:

MBF Inspection Services, Inc.,
Debtor.

No. 18-11579-t11
Chapter 11

Thomas Ganci, Larry Alexander, Gary
Brooks, Glynn Estess and Gary
Marshall,

Creditors/Appellants.

Appeal No. 1:19cv-00061-WJ-SCY

v.

MBF Inspection Services, Inc.
Debtor/Appellee.

MOTION PURSUANT TO BANKRUPTCY RULE 8009(E)

COMES NOW the Debtor/Appellee, MBF, by and through counsel Jennie D. Behles of B.L.F. LLC and does move this Court for an Order striking items improperly designated as a part of the record on appeal.

1. Those documents are documents designated in Item number 2 of Dkt. No. 167, filed on 1/31/19 by Ganci et al, Creditors/Appellants. These documents are pleadings in the United States District Court Case in the Southern District of Ohio which are not part of the record, and the appeal in this case, pursuant to Bankruptcy Rule 8009(A)(4) and in fact certain of these documents from that case may have been admitted as Exhibits in this matter, and if so, would be part of the transcript of the two-day hearing on this matter, but they are not part of the Record on Appeal.

2. Dkt No. 103 is listed as Exhibit 2 on the Plaintiff's Exhibit List; Dkt. No. 107 as Exhibit 7; Dkt. Nos. 115, 116, and 133 were not on the Ganci et al., Exhibit List; Dkt. No. 117

was Exhibit 6; Dkt. No. 123 was Exhibit 8; Dkt. No. 125 was Exhibit 3; Dkt. No. 130 was Exhibit 4; Dkt. No. 131 was Exhibit 9; and Dkt. No. 133 was not on the Exhibit List.

3. These documents are not part of the record on appeal and at best, may have been admitted as exhibits. Certain of the items could not have been admitted as exhibits for the reason that they were not on Plaintiff's Exhibit List. To the extent that these items could be included in the record, they would need to be included within the Transcript of the Hearing as marked exhibits that were admitted, and not as a separate document in the Record on Appeal.

4. The Debtor/Appellee does not presently have an official copy of the Court's admitted Exhibit List and so, cannot verify the exhibits listed were even admitted by the Court.

5. Ganci counsel has been contacted in regard to this Motion, and has _____ responded ___X___ has not responded _____ has responded that they object.

WHEREFORE the Debtor/Appellee, MBF Inspection Services Inc., seeks an Order Striking all the Documents listed in Exhibit 2 from the Record on Appeal, and for such other and further relief as the Court deemed just in the premises.

Respectfully submitted,

B.L.F., LLC

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CERTIFICATE OF SERVICE

I certify that I sent a true and correct copy of the foregoing to the parties listed below on February 15th, 2019 through the Court's electronic noticing system, the CM/ECF SYSTEM.

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By: s/ filed electronically
Jennie Deden Behles